

Application No.: 10/763,445

Docket No.: 66046-0007

REMARKS

Applicants are in receipt of the Office Action mailed June 14, 2005. Applicant's representative appreciates the voice mail message left by the Examiner attempting to provide guidance with respect to an appropriate response to the office action. If the response that follows is not in accordance with the intentions of the Examiner, the courtesy of a discussion with the undersigned is respectfully requested. None of the claims have been cancelled. A typographical error in claim 29 has been addressed. Claims 42-48 have been withdrawn.

A. Restriction

The Examiner indicated that the patent application contains claims directed to the following alleged patentably distinct inventions:

- I. Claims 1-41 and 49-50, drawn to electric motor control for a transmission, classified in class 477, subclass 3.
- II. Claims 42-48, drawn to engine control during shift, classified in class 477, subclass 109.

Based on review of the claims, Applicants elect the claims of Group I, with traverse. Thus, claims 1-41 and 49-50 are selected explicitly for examination. However, it is respectfully submitted that the restriction is inappropriate since, as the Examiner acknowledges in the Office action, that claims 37-50 are generic.

Moreover, it is respectfully submitted that the subject matter of the indicated groups is sufficiently related that a thorough search for the subject matter of the selected species would encompass a search for the subject matter of the other species. See MPEP § 803, which states that "[i]f the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions." This policy should apply in the present application to avoid unnecessary delay and expense to the Applicants and duplicative examination by the Patent Office.

Application No.: 10/763,445

Docket No.: 66046-0007

B. Election of Species

As best understood, the Examiner is also requesting a further election based on claim limitations between a transmission and a shunt. Claims 1-4, 7-8, 11-19, 22-23, 33-34 and 37-50 are deemed generic. The rationale for the election is not explained in the office action.

Applicant's representative apologizes, but it appears that all of the claims are generic based on current understanding. For example, claims 28 and 29 were deemed not generic, but claims 33 and 34, which depend from claim 29 are deemed generic. Moreover, claim 28 explicitly recites both a transmission and a shunt. None of the claims that are identified as being non-generic appear to have limitations that are exclusive to a transmission. As a practical matter, it is believed that in view of the significant number of generic claims identified by the Examiner in the office action, it is believed that a search of records encompassing both species, to the extent that there are such species, will be required.

Thus, if the Examiner were to maintain the Election of Species, clarification of the species and the listing of generic claims as well as the rationale for the determination that a subset of the claims should not be examined together is respectfully requested.

Application No.: 10/763,445

Docket No.: 66046-0007

C. Conclusion

In view of the comments above, claims 42-48 are withdrawn. Since all of the claims are believed generic based on current understanding, no election of species is required.

It is believed that any additional fees due with respect to this paper have already been identified. However, if any additional fees are required in connection with the filing of this paper that are not identified in any accompanying transmittal, permission is given to charge account number 18-0013 in the name of Rader, Fishman and Grauer PLLC.

Dated: July 14, 2005

Respectfully submitted,

By 

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